

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSEPH M. HESS and WILLIAM WHEELER,  
  
Plaintiffs-Appellants,

FOR PUBLICATION  
March 31, 2005  
9:05 a.m.

V

CANNON TOWNSHIP and GRATTAN  
TOWNSHIP,

No. 248974  
Kent Circuit Court  
LC No. 03-002455-CZ

Defendants-Appellees.

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Official Reported Version

Before: Neff, P.J., and Smolenski and Schuette, JJ.

SMOLENSKI, J. (*dissenting*).

Because I find no constitutional or statutory authority for Cannon Township to expend funds to assist a neighboring township with a legal dispute, I respectfully dissent.

Townships have no inherent powers; rather, they possess only those limited powers conferred on them by the Legislature or by the Michigan Constitution. *Howell Twp v Rooto Corp*, 258 Mich App 470, 475; 670 NW2d 713 (2003). The powers granted to townships by the Constitution and by law only include those fairly implied and not prohibited by the Constitution. *Id.* at 475-476, citing Const 1963, art 7, § 34. Thus, for the disbursement of Cannon Township funds to Grattan Township to be a valid expenditure, there must be a statute or constitutional provision that expressly or impliedly authorizes that type of expenditure. *Hanselman v Wayne Co Concealed Weapon Licensing Bd*, 419 Mich 168, 187; 351 NW2d 544 (1984).

The majority finds authority for Cannon Township's contract with Grattan Township in MCL 41.2(1)(b), which provides that townships have the power "[t]o make contracts necessary and convenient for the exercise of their corporate powers." While this statute does grant townships the power to enter into contracts, it also limits that grant to contracts that are "necessary and convenient for the exercise of their corporate powers." MCL 41.2(1)(b). Consequently, the exercise of the contract power under MCL 41.2(1)(b) must be predicated upon a separate and distinct grant of power.

Cannon Township has not and cannot demonstrate that the contract with Grattan Township was based on an underlying separate and distinct grant of power. Nor can Cannon Township rely on a general police power, as did the city of Kalamazoo in *Hays v City of Kalamazoo*, 316 Mich 443, 455-456; 25 NW2d 787 (1947). Cities have inherent police power

pursuant to Const 1963, art 7, § 22.<sup>1</sup> *Detroit Edison Co v Richmond Twp*, 150 Mich App 40, 45; 388 NW2d 296 (1986). Townships, on the other hand, "have no police power of their own, but have only those powers and immunities which are provided by law." *Id.* at 47-48, citing Const 1963, art 7, § 17 (a township is "a body corporate with powers and immunities *provided by law*") (emphasis added). Const 1963, art 7, § 34<sup>2</sup> does not grant townships a general police power. Rather, it is a rule of construction mandating that the powers granted to townships in statutes and constitutional provisions be liberally construed. It does not expand a township's powers.<sup>3</sup> Furthermore, while townships are granted a limited police power under MCL 41.181 regarding the public health, safety, and general welfare of its citizens and property, a township's power under this statute is limited to adopting ordinances and regulations.<sup>4</sup> MCL 41.181(1). It does not authorize a township to expend funds in general.<sup>5</sup> The purposes for which a township board may appropriate money or expend funds are governed by MCL 41.110c, which states:

The township board may appropriate money or expend funds for all of the following purposes:

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<sup>1</sup> Const 1963, art 7, § 22 provides:

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. *Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.* [Emphasis added.]

<sup>2</sup> Const 1963, art 7, § 34 provides, "The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution."

<sup>3</sup> The convention comment to this provision notes that cities and villages already enjoyed broad construction of their powers and that "it is the intention here to extend to counties and townships *within the powers granted to them* equivalent latitude in the interpretation of the constitution and statutes." 2 Official Record, Constitutional Convention 1961, p 3395 (emphasis added).

<sup>4</sup> Under MCL 41.181(1), a township may adopt ordinances concerning such matters as "fire protection, licensing or use of bicycles, traffic, parking of vehicles, sidewalk maintenance and repairs, the licensing of business establishments, the licensing and regulating of public amusements, and the regulation or prohibition of public nudity . . . ." Ordinances may also apply to streets, roads, highways, or other designated areas of the township as determined by the township board. MCL 41.181(2).

<sup>5</sup> MCL 41.181(1) only authorizes a township to appropriate funds for the establishment and maintenance of a township police department and for services from the county sheriff.

(a) To advertise the agricultural, industrial, commercial, educational, or recreational advantages of the state, county, or township.

(b) To collect, prepare, or maintain an exhibition of the products and industries of the township at any domestic or foreign exposition to encourage immigration and increase the trade in the products of this state or the township.

(c) To advertise this state or any portion of this state to tourists and resorters.

(d) To maintain and circulate a publication to disseminate information regarding township improvements, activities, and functions.

Construing these purposes liberally, none can fairly be construed to encompass providing funds to cover another township's legal costs.

Accordingly, I would reverse the trial court's grant of summary disposition in favor of defendants and hold that summary disposition be granted in favor of plaintiffs pursuant to MCR 2.116(I)(2) and 7.216(A)(7).

/s/ Michael R. Smolenski